

Case Conclusion Data Sheet

Enforcement Identifier: 01-2007-

Case Name: CLARIANT CORPORATION

Facility Name: CLARIANT CORPORATION

Federal Statute(s) Violated: TSCA

Respondents:

*** Red Fields are required

Settlement Details

Action Type:

☒ Administrative Penalty Order With or Without Injunctive Relief

ADR Used:

☐ Yes

EMS Requested:

☐ Yes

Compliance/Proposed Order: 02/16/2007

Final Order Issued:

Penalty/Cost Recovery

Federal Penalty by Statute

Cash Civil Penalty Amount Sought:

Notice Pleading:

☒ Yes

Cash Civil Penalty Amount Required
TSCA

Penalty Amount
\$211,200.00

State/Local Penalty Amount:

Federal Collected:

Injunctive Relief/Compliance Activities

Direct Environmental Reduction
(Physical Actions):

Removal and Disposal of PCB Contaminated Pigments

Cost of Physical Actions:

\$1,350,000.00

Quantitative Environment Impact

Select Pollutant/Chemical/Waste Stream	Annual Amount	Select Units	Select Media
PCB pigments	168276	Pounds	Pesticides and Toxic Substances

Preventative Actions:

Cost of Preventative Actions:

Quantitative Environment Impact

Annual Amount	Select Units	Select Media
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:)	Docket No. TSCA-01-2007-0058
)	
CLARIANT CORPORATION)	
)	<u>CONSENT AGREEMENT</u>
)	<u>AND FINAL ORDER</u>
Respondent)	
)	
)	

The United States Environmental Protection Agency, Region I ("EPA") issues this Consent Agreement and Final Order to assesses penalties for violations of Section 6(e) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2605(e), involving the manufacture, distribution in commerce, and export of polychlorinated biphenyls ("PCBs").

CONSENT AGREEMENT

The EPA issued Clariant Corporation a Complaint and Notice of Opportunity for Hearing in February 2007. The EPA and Respondent Clariant Corporation ("Clariant" or "Respondent") agree that settlement of this matter is in the public interest, and that entry of this Consent

CONCURRENCES							
Filename: FAUSER\TOLIVIER\Clariant\ClariantCAO4.wpd							
Mail Code	SEL	SEP	SEP	SEP	SEP	SEP	
Surname	OLIVIER	OLIVIER	OLIVIER	OLIVIER	OLIVIER	OLIVIER	
Date	3/19/07	3/20/07	3/21/07	3/26/07	3/26/07	3/26/07	

Select Pollutant/Chemical/Waste Stream			

Facility Management or Information Practice
(Non-Physical Actions):

Cost of Non Physical Actions:

If Other, please describe:

Testing/Sampling
Risk Assessment

\$210,000.00

SEP

Created by : Tom Olivier
Date Created: 03/19/2007

Region 1 Settles Violations involving Manufacture of PCBs

Region 1 has filed an administrative consent agreement and final order assessing penalties of \$ 211,200 against Clariant Corporation for the manufacture and distribution in commerce of PCBs in pigments in violation of TSCA.

In September 2003, Clariant notified EPA that it had discovered inadvertently-manufactured PCBs at levels over 50 ppm in two red pigment products. The products had been manufactured, distributed in commerce to customers, and used in the manufacture of consumer products from early 2002 to September 2003. In all, Clariant produced numerous batches of pigments at levels over 50 ppm in 2002 and 2003, and made multiple shipments of pigments to customers.

After notifying EPA of the PCB levels in its pigments, Clariant recalled unused pigments from its customers and agreed to undertake a risk assessment of products containing contaminated pigments. The risk assessment was used to evaluate whether product recalls were necessary. The analysis, as reviewed and approved by EPA, found no unreasonable risk for end users. Accordingly, product recalls appear unnecessary.

Contacts: Marianne Milette, (617) 918 1854; Tom Olivier, (617) 918 1737.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:) Docket No. TSCA-01-2007-0058
)
 CLARIANT CORPORATION)
) CONSENT AGREEMENT
) AND FINAL ORDER
 Respondent)
)
 _____)

The United States Environmental Protection Agency, Region I ("EPA") issues this Consent Agreement and Final Order to assesses penalties for violations of Section 6(e) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2605(e), involving the manufacture, distribution in commerce, and export of polychlorinated biphenyls ("PCBs").

CONSENT AGREEMENT

The EPA issued Clariant Corporation a Complaint and Notice of Opportunity for Hearing in February 2007. The EPA and Respondent Clariant Corporation ("Clariant" or "Respondent") agree that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving t

CONCURRENCES								
Filename: FAUSER\TOLIVIER\Clariant\ClariantCAO3.wpd								
Mail	SEL		SEP	SEL				
Code		SEP	And					
Surname	OLEVIER	M. M. M.	Hayes	Napier				
Date	2/8/07	2/9/07	2/12/07	2-13-07				

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Christopher Barnard, Senior Vice President
Clariant Corporation
4000 Monroe Road
Charlotte NC 28205

Re: Docket No. TSCA-01-2007-0058

Dear Mr. Barnard:

Enclosed is a Complaint seeking penalties for violations of federal PCB regulations under Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), arising from the manufacture and distribution in commerce of PCBs at your company's Coventry, Rhode Island, facility.

Please read the Complaint and the enclosed rules of practice carefully to find the options available to you in responding to this action. Whether or not you choose to request a hearing, you may wish to request an informal conference to discuss the matter with EPA representatives. Please note that failure to provide a written answer to this Complaint within 30 days of receipt could result in the issuance of a default order.

CONCURRENCES							
							Filename:
							F:\USER\TOLIVIER\Clariant\clarianttransltr.wpd
Mail Code	SEL						
Surname	OLIVIER	SEP		SEL	SEE		
Date		2/14/07		2/13/07	2/15/07		

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In re:)	
)	
Clariant Corporation,)	Docket No. TSCA-01-2007-0058
)	
Respondent)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
)	

COMPLAINT

The United States Environmental Protection Agency, Region 1 ("EPA") issues this administrative Complaint and Notice of Opportunity for Hearing under Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), to Clariant Corporation. The Complaint notifies Clariant Corporation ("Clariant" or "Respondent") that EPA intends to assess penalties for violations of Section 15 of TSCA and of EPA's regulations at 40 C.F.R. Part 761. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

STATUTORY AND REGULATORY BASIS

CONCURRENCES								
Filename:								
F:\USER\TOLIVIER\Clariant\ClariantCOMTSCA.WPD								
Mail	SEL	SEP	SEP	SEP				
Code	140	M. M. M.	Hayes	Martinez				
Surname	OLIVIER		Hayes	Martinez				
Date	2/8/07	2/9/07	2/12/07	2/13/07				

Administrative Case Data Form

* Red Fields are required

Enforcement Action Identifier: 01-2007-	
Case Name: Clariant Corporation	
Choose Action Type(s) TSCA 16 Action For Penalty	
Program or Facility ID:	
Facility Name: Clariant Corporation	
Facility Address: 500 Washington St	
Facility City: Coventry	
Facility State: <input checked="" type="checkbox"/> RI	Zip Code: 02816
Primary 4-digit SIC-code:	Other SIC-Codes:
Federal Statute(s) Violated: TSCA	
Choose Sections Violated TSCA - 6-PCBS - PCBS	
CFR Citation(s): 761.20(b) 761.20(c)	
MOA Priorities:	
Regional Priorities:	
Core Priorities: <input checked="" type="checkbox"/> Yes	
EPA Lead Attorney: Olivier, Tom	
EPA Technical Contact: Milette, Marianne	
Respondents:	Small Business n Indicator (Y/N):
Violation Type(s)	
Select Pollutant(s)	
Result of Voluntary Self-Disclosure: <input checked="" type="checkbox"/> Yes	
MultiMedia Action:	
Environmental Justice:	
Relief Sought: Penalty	
Notice Pleading: <input type="checkbox"/> Yes	
Cash Civil Penalty Amount Sought:	
Cost Recovery Amount Sought:	

*Case Summary: In September 2003, Clariant notified EPA that it had discovered inadvertently-manufactured PCBs at levels over 50 ppm in two red pigment products. The products had been manufactured, distributed in commerce to customers, and used in the manufacture of consumer products from early 2002 to September 2003. In all, Clariant produced 67 batches of pigments at levels over 50 ppm in 2002 and 2003, and made 129 shipments of pigments to customers.

After notifying EPA of the high PCB levels in its pigments, Clariant recalled unused pigments from its customers and agreed to undertake a risk assessment of consumer products containing its contaminated pigments. The risk assessment analyzed the risks presented by carpets and plastic food wrap that used the red pigments in question (these were deemed the products with the highest potential for human exposure). The purpose of the risk assessment was to evaluate whether product

recalls were necessary. The recently-concluded analysis has been reviewed and approved by EPA, and finds that there is no unreasonable risk for end users. Accordingly, product recalls appear unnecessary.

* Summary should include the nature of the action and the problem to be addressed, summary of relief requested, and other special information. This data will be released to the public.

Additional Facilities

Milestones

Action Type	Actual Date:
<u>Complaint/Proposed Order:</u>	
<u>Final Order Issued:</u>	
<u>Demand for Stipulated</u>	
<u>Penalties:</u>	
<u>Enforcement Action Closed:</u>	

Enforcement Action Resolution Type:

Combine with Enforcement Action:

Court Information

EPA Docket Number:	TSCA-01-2007-0058
Court Case Name:	

Created by : Tom Olivier
Date Created: 02/08/2007



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

Memorandum

Date: January 9, 2007

Subject: Evaluation of Risk Associated with PCB in Clariant Pigments

From: Kimberly Tisa, PCB Coordinator (CPT) *K. Tisa*
Office of Ecosystem Protection/Chemical Management Branch

To: Marianne Milette, PCB Enforcement Coordinator (SEP) *M. Milette*
Office of Environmental Stewardship

BACKGROUND

On September 23, 2003 Clariant notified EPA Headquarters that elevated PCB concentrations had been identified in two pigment products manufactured at its Coventry, Rhode Island facility. Subsequently, EPA Headquarters provided this information to Region 1 for follow-up. Following an October 3, 2003 meeting between Clariant and Region 1 and an October 15, 2003 letter to Clariant from Region 1, Clariant submitted additional information in December 2003.

In January, 2004 EPA Region 1 and EPA Headquarters held a joint meeting with Clariant in Washington. During that meeting, EPA identified the steps that Clariant would need to follow to evaluate the risks associated with products which may have been manufactured with the pigments that exceeded allowable concentrations under 40 CFR Part 761. Numerous products were identified by Clariant and conservative estimates on the PCB concentrations in those products needed to be evaluated to determine if a product recall would be necessary based on unacceptable exposures to PCB products by end-users. Based on this discussion, the following information was provided to Region 1. {EPA's responses to the information provided by Clariant are also noted}.

- Clariant Corporation to EPA, letter dated April 30, 2004 with proposed approach for assessing exposure risks {EPA response June 2, 2004}
- *Conceptual Exposure Model and Preliminary Assessment for End User of Pigment Red 144 and 214, August 31, 2004 with Appendix 1, Volumes 1 and 2* {Versar comments October 25, 2004}

- *Exposure and Screening-Level Risk Assessment for Carpet Fiber and Food Wrap Scenarios Associated with Pigment Red 144/214, December 6, 2004 {Versar comments January 23, 2005}*
- *Exposure and Screening-Level Risk Assessment for Carpet Fiber and Food Wrap Scenarios Associated with Pigment Red 144/214, February 21, 2005 {Versar comments March 18, 2005}*
- *Exposure and Screening-Level Risk Assessment for Carpet Fiber and Food Wrap Scenarios Associated with Pigment Red 144/214, April 11, 2005 {Versar comments June 6, 2005 and June 20, 2005}*
- *Clariant July 8 and July 11, 2005 Responses to EPA June 20, 2005 comments {Versar comments August 1, 2005}*
- *Addenda to the Conceptual Exposure Model Report (August 2004) and Exposure and Screening-Level Risk Assessment Report (August 11, 2005), Red Pigment Project, September 16, 2005 {Versar comments December 16, 2005}*
- *Addendum II To Report: Exposure and Screening Level Risk Assessment for Carpet Fiber and Food Wrap Scenarios Associated with Pigment Red 144/214 April 11, 2005 Revision, August 18, 2006 {Versar comments October 13, 2006}*
- *Addendum II To Report: Exposure and Screening Level Risk Assessment for Carpet Fiber and Food Wrap Scenarios Associated with Pigment Red 144/214 April 11, 2005 Revision, Step-By-Step Calculations Guide November 14, 2006 {Versar had no comments on this final package finding all information provided to be reasonable and the calculations to support the findings}*

CONCLUSIONS

As part of the initial evaluation of products potentially remaining in use, EPA agreed that it was reasonable to look at the products that would have the highest potential exposure for end-users: carpet fiber and food wrap. The exposure and screening level risk assessments considered work-case scenarios, including highest concentrations of PCBs in products.

No risks were identified in the food wrap scenario. In the carpet fiber scenario, only 1 risk exceedence was identified. The Child Non-Cancer and Cancer Risk Scenarios, which considered completed volatilization of PCBs from the Carpet Surface (Table 4 of Addendum II), found an exceedence of the non-cancer hazard index of 1. This exceedence occurred using the highest exposures and highest PCB concentration found in the carpet. Based on ATSDR guidance, the oral bioavailability is likely to be lower than 1.0 (worst-case scenario) and therefore under actual conditions, the hazard index is likely

to be less than 1.0, which would fall within acceptable risk guidelines. The cancer risk end point of 1×10^{-6} was never exceeded in the carpet fiber evaluation.

Based on the information provided, the exposure and risk evaluations provided by Clariant appear reasonable. Given that the products representing the highest potential exposures have been evaluated and that the risk evaluations appear to support that there is no unacceptable risk to PCBs for the end-user, it does not appear that evaluation of further products is necessary. However, in the event Clariant should determine that information provided to support its evaluations is not accurate, re-evaluation of the exposures and risk determinations may be needed.

CLARIANT PIGMENT PRODUCTION (Based on the data Clariant has provided)

No batches with PCB concentrations of 50 ppm or greater were manufactured in 2001.

28 batches with PCB concentrations of 50 ppm or greater were manufactured in 2002.

39 batches with PCB concentrations of 50 ppm or greater were manufactured in 2003.

The batches are generally mixed to form a blend which is the commercial product.

Pigment 144/214 Analysis

Samples sent for analysis					
		Production		Date sent	Results
#	Sample	in SAP	source	to Lab	PPM
1	Red BNP 6213701	08/15/01	Batch	9/24/2003	20
2	Red BNP 6213702 (9-2001)	09/19/01	Batch	9/12/2003	22
3	Red BNP 6213703	10/02/01	Batch	9/24/2003	43
4	Red BNP 6213704	10/05/01	Batch	9/24/2003	32
5	Red BNP 6213706	02/14/02	Batch	9/23/2003	107
6	Red BNP 62253701	04/15/02	Batch	9/23/2003	47
7	Red BNP 62253702	04/29/02	Batch	9/18/2003	113
8	Red BNP 62253703	04/30/02	Batch	9/23/2003	52
9	Red BNP 62253705	06/25/02	Batch	9/23/2003	108
10	Red BNP 62253707	06/28/02	Batch	9/23/2003	119
11	Red BNP 62253708	07/19/02	Batch	9/23/2003	102
12	Red BNP 62253709	07/19/02	Batch	9/23/2003	280
13	Red BNP 62253710	08/05/02	Batch	9/23/2003	104
14	Red BNP 62253711	08/12/02	Batch	9/18/2003	82
15	Red BNP 62253712	08/16/02	Batch	9/12/2003	255
16	Red BNP 62253713	08/21/02	Batch	9/23/2003	85
17	Red BNP 62253714	08/27/02	Batch	9/23/2003	87
18	Red BNP 62253715	08/30/02	Batch	9/23/2003	112
19	Red BNP 62253716	09/10/02	Batch	9/24/2003	146
20	Red BNP 62253717	09/16/02	Batch	9/23/2003	180
21	Red BNP 62253718	09/19/02	Batch	9/23/2003	424
22	Red BNP 62253719	09/24/02	Batch	9/18/2003	528
23	Red BNP 62253720	09/27/02	Batch	9/23/2003	237
24	Red BNP 62253721	09/30/02	Batch	9/18/2003	248
25	Red BNP 62253722	10/08/02	Batch	9/23/2003	323
26	Red BNP 62253723	10/11/02	Batch	9/23/2003	335
27	Red 3B 62254101	11/5/2002	Batch	9/23/2003	2034
28	Red 3B 62254102	11/19/2002	Batch	9/23/2003	858
29	Red 3B 62254103	11/19/2002	Batch	9/23/2003	606
30	Red 3B 62254103	11/19/2002	Batch	9/18/2003	470
31	Red 3B 62254104	12/3/2002	Batch	9/23/2003	277
32	Red 3B 62254105	12/13/2002	Batch	9/23/2003	256
33	Red 3B 62254106	12/18/2002	Batch	9/23/2003	476
34	Red BNP 62313801	01/20/03	Batch	9/23/2003	555
35	Red BNP 62313802	02/03/03	Batch	9/18/2003	619
36	Red BNP 6R313803-EC	02/24/03	Batch	9/10/2003	273
37	Red BNP 6R313804-EC	02/27/03	Batch	9/10/2003	213
38	Red BNP 6R313805-C	02/28/03	Batch	9/10/2003	182
39	Red BNP 6R313805-EC	02/28/03	Batch	9/10/2003	203
40	Red BNP 6R313806-C	03/11/03	Batch	9/10/2003	532
41	Red BNP 6R313807-EC	03/11/03	Batch	9/10/2003	239
42	Red BNP 6R313808-EC	03/17/03	Batch	9/10/2003	359
43	Red BNP 6R313809-C	03/18/03	Batch	9/10/2003	1061
44	Red BNP 6R313810-C	03/20/03	Batch	9/10/2003	421
45	Red BNP 62313811	03/25/03	Batch	9/29/2003	493
46	Red BNP 62313812	04/09/03	Batch	9/23/2003	115
47	Red BNP 62313813	04/09/03	Batch	9/29/2003	296
48	Red BNP 62313814	04/09/03	Batch	9/29/2003	532

data response Q4-3 batches

Pigment 144/214 Analysis

#	Sample	Production in SAP	source	Date sent to Lab	Results PPM
49	Red 3B 6R313701-EC	4/28/2003	Batch	9/10/2003	824
50	Red 3B 6R313702-EC	5/2/2003	Batch	9/10/2003	130
51	Red 3B 62313703	5/5/2003	Batch	9/23/2003	498
52	Red 3B 6R313704-EC	5/5/2003	Batch	9/10/2003	758
53	Red 3B 6R313705-EC	5/6/2003	Batch	9/10/2003	528
54	Red 3B 6R313706-EC	5/12/2003	Batch	9/10/2003	574
55	Red 3B 6R313707-EC	5/14/2003	Batch	9/10/2003	590
56	Red BNP 62313816	05/19/03	Batch	9/12/2003	694
57	Red BNP 62313817	05/28/03	Batch	9/12/2003	249
58	Red BNP USEA000221	06/01/03	Batch	9/12/2003	171
59	Red BNP USEA000222	06/07/03	Batch	9/12/2003	382
60	Red BNP USEA000223	06/13/03	Batch	9/12/2003	183
61	Red BNP USEA000232	06/21/03	Batch	9/29/2003	240
62	Red BNP USEA000233	06/27/03	Batch	9/29/2003	501
63	Red BNP USEA000234	07/03/03	Batch	9/29/2003	475
64	Red BNP USEA000372	07/09/03	Batch	9/12/2003	180
65	Red BNP USEA000373	07/15/03	Batch	9/12/2003	246
66	Red BNP USEA000374	07/21/03	Batch	9/12/2003	304
67	Red BNP USEA000375	07/27/03	Batch	9/12/2003	229
68	Red 3B USEA000235	08/02/03	Batch	9/15/2003	101
69	Red 3B USEA000238	08/08/03	Batch	9/15/2003	100
70	Red 3B USEA000239	08/14/03	Batch	9/15/2003	35
71	Red 3B USEA000240	08/20/03	Batch	9/15/2003	99
72	Red 3B USEA000241	08/26/03	Batch	9/18/2003	116
73	Red 3B USEA001421	09/01/03	Batch	9/18/2003	53
74	Red 3B USEA001414	09/03/03	Batch	9/18/2003	39
75	Red 3B USEA001416	09/06/03	USEA0001416 lab filtered/dried from K2204 (1734-235-9)	9/25/2003	37
76	Red 3B USEA001415	09/08/03	sample from press, lab dried	9/25/2003	40

DRAFT

**SELF-DISCLOSURE CASE REVIEW
CLARIANT**

CONDITIONS:

1. Discovery of non-compliance was found through a compliance management system. A recently initiated global program augmenting the corporate audit system, called for the testing of pigment products in the Coventry facility.

2. The violation was identified voluntarily, and not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit....etc:

The facility needed to determine if the processes were "excluded manufacturing processes". Under the definition of "excluded manufacturing process" at 40 CFR 761.3, the inadvertently generated PCBs in the products must have an annual average of less than 25 ppm, with a 50 ppm maximum. The release to ambient air must be less than 10 ppm and the discharge to water less than 100 ug/l. 40 CFR 761.185 allows for this determination to be made either by actual monitoring of PCB levels or on theoretical assessments.

Under 40 CFR §§ 761.185, 761.187 and 761.193 recordkeeping, certification, and **reporting** is required for "excluded manufacturing processes" in which the PCB concentration is greater than 2 ppm. The facility has not submitted a certification/report.

Will need to discuss with the legal office if the certification/reporting requirements in the PCB regulations make this an ineligible disclosure.

3. Prompt disclosure:

The company states the disclosure was made within 21 days of discovery. However, the date of discovery was not provided/documented. Will need additional information to determine if this condition was met.

4. Discovery and disclosure independent of Government or third party:

Yes.

5. Correction and remediation:

The company states that they stopped producing the two products at issue and will not resume production until they can produce pigments in compliance with TSCA. Contacting their customers to remove and dispose of the material.

Further information is needed on the following:

- a) how long the manufacturing processes in question have been going on.
- b) what is the product(s) and application of the product(s).
- c) how many shipments have been made, including quantity and customers.
- d) have previous shipments been distributed beyond their primary customers.
- e) copies of the analytical data documenting the violations.
- f) copies of the analytical data/ calculations (using models) they have that supports their statement that no releases to water or air.

6. Prevent recurrence:

Agreed in their disclosure to take steps to prevent any recurrence of the violation. Will need written documentation of their "plan" which should include plans for sampling.

7. No repeat violations:

None identified in Region 1, need to conduct a Nationwide search.

8. Other violations excluded:

Not enough information provided to determine if the violation resulted in an imminent and substantial endangerment to, human health or the environment. Need answers on the concentration of PCBs in the products, use of the products and releases to water or air.